

William A. Birdwell, OSB #730298

billbirdwell@dwt.com

Robert D. Newell, OSB #790917

bobnewell@dwt.com

DAVIS WRIGHT TREMAINE LLP

1300 SW Fifth Avenue, Suite 2300

Portland, OR 97201

Telephone: (503) 241-2300

Facsimile: (503) 778-5299

Joseph A. Micallef, (Appearing *pro hac vice*)

joseph.micallef@aporter.com

Matthew N. Bathon, (Appearing *pro hac vice*)

matthew.bathon@aporter.com

ARNOLD & PORTER LLP

555 Twelfth Street, NW

Washington, DC 20004-1206

Telephone: (202) 942-5000

Facsimile: (202) 942-5999

Attorneys for Defendant Microsoft Corporation

**UNITED STATES DISTRICT COURT
DISTRICT OF OREGON**

GARY ODOM

Plaintiff and Counterclaim
Defendant,

vs.

MICROSOFT CORPORATION

Defendant and Counterclaim
Plaintiff.

Case No. 3:09-CV-230-MO

**DEFENDANT MICROSOFT
CORPORATION'S RESPONSE TO
PLAINTIFF GARY ODOM'S MOTION
FOR CLARIFICATION**

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Plaintiff Gary Odom (“Odom”) moves for “clarification” concerning the Court’s recent grant of Odom’s motion to dismiss his own claims without prejudice. He notes that the Court issued three identical orders in each of the three cases he had brought (against Microsoft, Autodesk, and Attachmate, *et al.*, respectively), but that while the orders in the *Autodesk* and *Attachmate* cases have (he says) ended those cases, the order issued in this case dismissed only his claims against Microsoft, leaving the claims of Microsoft against Odom undisturbed. *See* Odom’s March 23, 2010 letter.

Odom’s initial motion was, perhaps, ambiguous in what he sought, asking the Court for “dismissal without prejudice” but never identifying exactly what he wanted dismissed. (D.I. 119) (emphasis omitted). The Court’s resolution of that motion, however, was anything but ambiguous. For example, after Microsoft objected to dismissal of Microsoft’s declaratory judgment counterclaims, (D.I. 120), and responded to the Court’s request for a more detailed position on dismissal of those counterclaims, (D.I. 130), the Court affirmatively stated that it would not dismiss the counterclaims: “I am persuaded that it’s not within my power to simply dismiss them even without prejudice at this point.” March 11, 2010 Hearing Tr. at 3:18-20.¹ Indeed, the Court told Odom, “There are claims against you. I’m not at liberty to just erase them or make them go away. They need to be brought to a final conclusion. I have made the decision not to wait further for you to obtain counsel, so we’ll just have to wrap this up.” *Id.* at 12:13-17. The Court even issued an order confirming the schedule set at the hearing for resolving those counterclaims. (D.I. 132). It is difficult to see any ambiguity in this record.

The day after the hearing on Odom’s motion to dismiss, however, the Court issued an order “GRANTING Motion to Dismiss [119] without prejudice.” (D.I. 134). From this one-sentence minute order Odom suggests that he was led to believe the Court had changed its mind

¹ A full copy of the transcript from the March 11, 2010 hearing is attached.

about its decision not to dismiss Microsoft's counterclaims. Odom seems to assert that he therefore thought he was not required to file a reply brief in support of his motion to stay. He suggests that if Microsoft's counterclaims have not been dismissed he intends to file something to persuade the Court to reverse the denial of his stay motion, claiming that the Court has been "misled by Microsoft" and was "without proper appraisal of the facts and law." Odom's March 23, 2010 letter.

A clear record is, no doubt, a virtue. And while Microsoft believes the record is already clear that its counterclaims have not been dismissed, the Court could hardly be criticized for reiterating its ruling for a *pro se* litigant. Microsoft therefore has no objection to the Court confirming the ruling handed down at the hearing on Odom's motion to dismiss.

As for Odom's desire to file something asking the Court to reconsider its decision on the motion to stay, since the Court's decision was based on objective facts (*i.e.*, the fact of Odom's suits in this Court against Microsoft licensees, the limited scope of the reexamination, and the schedule in this case) and Odom's own words, it is difficult to see what such a paper will add. Nevertheless, Microsoft will respond to such a paper when appropriate, unless the Court indicates a response would be unnecessary.

Dated: March 25, 2010

DAVIS WRIGHT TREMAINE LLP

s/ Robert D. Newell

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bobnewell@dwt.com
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